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Adam A. Marshall

Cat Reid

Reporters Committee for Freedom of the Press

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Washington, DC 20005

Environmental Protection Agency

Jeffrey Prieto

Acting General Counsel

July 11, 2022

VIA FOIA.GOV PORTAL

RE: Freedom of Information Act Request

To whom it may concern:

This letter constitutes a request under the federal Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and is submitted on behalf of the Reporters Committee for Freedom of the Press (“Reporters Committee” or “RCFP”). The Reporters Committee is a nonprofit association dedicated to protecting First Amendment freedoms and the newsgathering rights of journalists.¹

I. Background

In 1968, a Soviet submarine sank 16,500 feet below the surface of the Pacific Ocean,² prompting the United States to embark on an elaborate recovery mission.³ Although disguised as a deep-sea mining operation, it eventually caught the attention of journalists.⁴ When investigative reporter Harriet Ann Phillippi submitted a FOIA request to the CIA in 1975 for records tied to the mission, she received a response from the agency saying “that, in the interest of national security, involvement by the U.S. government in the activities which are the subject matter of your request can neither be confirmed nor denied.”⁵ That response, and others like it, have become commonly known as a *Glomar* response, named after the *Hughes Glomar Explorer*, the ship employed in the recovery effort.⁶ In the years since, the *Glomar* response has become a

¹ See generally www.rcfp.org.

² PROJECT AZORIAN: THE STORY OF THE HUGHES GLOMAR EXPLORER, 1 (2010), available at <https://nsarchive2.gwu.edu/nukevault/ebb305/doc01.pdf>.

³ *Id.* at 4.

⁴ *Id.* at 2.

⁵ Phillippi v. CIA, 546 F.2d 1009, 1011–12 (D.C. Cir. 1976).

⁶ Nathan Freed Wessler, “[We] Can Neither Confirm nor Deny the Existence or Nonexistence of Records Responsive to Your Request”: Reforming the *Glomar* Response under FOIA, 85 N.Y.U. L. Rev. 1381, 1386–87 (2010).

common tool used by agencies in responding to FOIA requests.⁷ However, the true number of *Glomar* responses is unknown, in part because agencies do not generally report data on its use.⁸

II. Requested Records

Pursuant to the FOIA, I, on behalf of the Reporters Committee, request access to and copies of all letters and correspondence sent from your agency to FOIA requesters in fiscal years 2017, 2018, 2019, 2020 and 2021, that contain any of the following phrases (case insensitive):

- “neither confirm nor deny”
- “neither confirms nor denies”
- “confirm or deny”
- “existence or nonexistence”
- “existence or non-existence”
- “vel non”

Please note that the Reporters Committee is not seeking (1) names, (2) addresses, (3) or contact information of any FOIA requester(s) that may appear on these requested records; such information may be redacted.

Please also note that this request does not seek, and your agency need not produce, correspondence from your agency to FOIA requesters regarding administrative appeals.

Finally, please provide the requested records in digital format via email to amarshall@rcfp.org.

III. Alternative Basis for Satisfaction of this Request

Alternatively, the Reporters Committee will consider this request satisfied, and your agency need not produce the records requested in Section II, *supra*, if your agency provides the Reporters Committee with the following data:

- 1) The number of letters and correspondence sent from your agency to FOIA requesters each fiscal year from 2017–2021 (inclusive) that contain any of the above phrases (*i.e.*, the number of *Glomar* responses issued by your agency in each fiscal year); and
- 2) An accounting of the FOIA exemption(s) cited in such letters and correspondence (*i.e.*, the exemption(s) that the *Glomar* responses were tethered to).

In other words, if your agency provides accurate data on the number of *Glomar* responses it sends per fiscal year, along with the exemptions those responses were tied to, your

⁷ See generally, A.Jay Walker, *Controlling Discourse, Foreclosing Recourse: The Creep of the Glomar Response*, 21 COMM. L. AND POL’Y, no. 4, 2016.

⁸ Wessler, *supra* note 6, at 1395.

agency need not produce the records requested in Section II, *supra*.⁹ Such data could take the following form:

Fiscal Year	Total Number of Glomar Responses	Number of Glomar Responses tied to Exemption 1	Number of Glomar Responses tied to Exemption 2	Number of Glomar Responses tied to Exemption 3	Number of Glomar Responses tied to Exemption 4	Number of Glomar Responses tied to Exemption 5	Number of Glomar Responses tied to Exemption 6	Number of Glomar Responses tied to Exemption 7	Number of Glomar Responses tied to Exemption 8	Number of Glomar Responses tied to Exemption 9
2017										
2018										
2019										
2020										
2021										

The Reporters Committee would also accept structured data showing individual responses (e.g., non-aggregated data) for fiscal years 2017–2021 (inclusive).

This alternative option is presented solely in an effort to simplify the collection of the data the Reporters Committee seeks. If your agency does not wish to engage on this alternative basis, please provide all records requested in Section II, *supra*.

If you have any questions about this alternative basis, or believe your agency has a proposal for a different alternative basis that would produce this data, please contact Adam Marshall via email or phone.

IV. Fees and Fee Categorization

As a representative of the news media, the Reporters Committee is only required to pay for the direct cost of duplication after the first 100 pages. 5 U.S.C. § 552(a)(4)(A)(ii)(II). This information is being sought on behalf of the Reporters Committee for inter alia, analysis and free dissemination to the general public through multiple avenues, including RCFP’s website,¹⁰ social media accounts,¹¹ and email newsletter.¹²

In the event that there are duplication fees for responding to this request, the Reporters Committee is willing to pay up to \$50. Please let me know in advance if fees for responding to this request will exceed that amount before proceeding

⁹ Attorney General Garland’s recent memorandum to all departments and agencies states that “[a]gency FOIA professionals should continue to work with FOIA requesters in a spirit of cooperation. Each agency should actively work with requesters to remove barriers to access and to help requesters understand the FOIA process” <https://www.justice.gov/ag/page/file/1483516/download>.

¹⁰ <https://www.rcfp.org/>.

¹¹ See, e.g., <https://twitter.com/rcfp> (~25.4 thousand followers as of June 7, 2022); <https://www.facebook.com/ReportersCommittee/> (9,700 followers as of June 7, 2022).

¹² <https://rcfp.us15.list-manage.com/subscribe?u=682100887bbcff066b451132&id=8f701b284f>.

V. Conclusion

If this request is denied in whole or part, please justify all such denials by reference to specific exemptions and explain why your agency “reasonably foresees that disclosure would harm an interest” protected by that exemption or why “disclosure is prohibited by law[.]” 5 U.S.C. § 552(a)(8). Please also ensure that all segregable portions of otherwise exempt material are released.

If you have any questions regarding this request, please feel free to contact Adam Marshall. Thank you in advance for your assistance.

Sincerely,

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(202) 795-9308

Cat Reid
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Reporters Committee for Freedom of the Press